

Chairman, Members of the House Judiciary Committee,

Please accept my compliments for yesterday as a body rejecting the vague language of HB328. It's language was drawn from The Supreme Court's Baxter decision. You demonstrated that vague judicial language does not pass as legislation here in Montana. You guys read the bills.

Now find HB 477 that provides the bright line that our medical community is begging for after being unsettled since 2008.

HB 477 defines the vague language of the court while assuring the public that all our choices of the Terminally Ill Act of 1993, Title 10, chapters 9 and 10 are intact.

Choices are all in good order such as end-of-life palliative care in which a dying person receives medication to alleviate pain that may hasten the dying person's death or any act to withhold or withdraw life-sustaining treatment.

These specifics address most all of the objections voiced on the floor yesterday.

Please do pass HB 477.

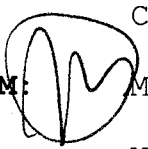
Bradley Williams

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MEMORANDUM

TO: Chairman Bennett and Members of the House Judiciary Committee.

FROM:  Margaret Dore, Esq., MBA

RE: Vote "Yes" on HB 477 (prohibit physician-assisted suicide; against public policy).

HEARING: February 18, 2013 at 8 a.m.

I. INTRODUCTION

I am an attorney in Washington State where physician-assisted suicide is legal. I urge you to vote "yes" on HB 477, which clarifies that this practice is prohibited and contrary to public policy. Don't make our mistake.

II. ARGUMENT

A. In the Last Four Years, Four States have Strengthened Their Laws Against Assisted Suicide.

In the last four years, four states have strengthened their laws against assisted suicide. These states are: Arizona, Idaho, Georgia and Louisiana.<sup>1</sup> See Memo at Tab 3, p. 4. Montana would make five.

B. Assisted Suicide is Contrary to Public Policy.

Physician-assisted suicide is contrary to public policy for the following reasons:

- "Eligible" persons can have years, even decades, to live. See: Tab 1 (regarding Jeanette Hall, thrilled to

<sup>1</sup> See articles at A-27 to A-30.  
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be alive 12 years after her doctor talked her out of physician-assisted suicide in Oregon); Tab 2 (regarding Compassion & Choices' proposal to render persons with chronic conditions, such as diabetes, eligible for assisted suicide); and Tab 3, page 4 (regarding how Oregon provides physician-assisted suicide/euthanasia to people with chronic conditions including diabetes).

- Once legal, there is pressure to expand "eligibility," for example, to the poor or the unlucky. See Tab 3, pp. 6-7.
- Legalization laws, such as this year's SB 202, are not what they are sold to be; legal power is given to other people. See Tab 3, pp. 7 to 14.
- Legalization creates new paths of elder abuse, for example by heirs and other predators. See Tab 3, pp. 15-16.
- Legalization allows healthcare providers and insurers to steer patients to suicide, which is well-documented in Oregon. See Tab 3, pp. 16-18.
- Legalizing assisted suicide sends the wrong message to young people (why is suicide ok if a doctor gives you a bad diagnosis, which might not even be correct, but not ok if something else unpleasant happens?)

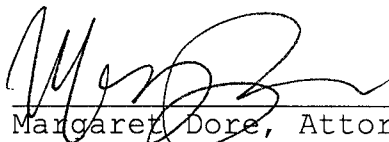
#### **C. Passing HB 477 Will Not Send Doctors to Prison.**

HB 477's application will be prospective only. The purpose of the law is merely to prevent the above harms (and other harms, not listed). The proposed bill can easily be avoided by doctors. All they have to do is not participate in patient suicides.

### **III. CONCLUSION**

HB 477 is a simple bill, which clarifies that physician-assisted suicide is prohibited and against public policy. I urge you to vote "Yes."

Respectfully submitted February 18, 2015



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A copy of HB 477  
is attached hereto.  
→

## 1 HOUSE BILL NO. 477

2 INTRODUCED BY G. BENNETT

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIDING OR SOLICITING SUICIDE LAWS; PROVIDING  
5 THAT PHYSICIAN-ASSISTED SUICIDE IS AGAINST PUBLIC POLICY AND IS PROHIBITED; REVISING THE  
6 OFFENSE OF AIDING OR SOLICITING SUICIDE; PROVIDING A DEFINITION; AMENDING SECTION  
7 45-5-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10

11 NEW SECTION. Section 1. Physician-assisted suicide -- against public policy. (1)

12 Physician-assisted suicide is against public policy for the purpose of 45-2-211 and is prohibited as provided in  
13 45-5-105.

14 (2) (a) For purposes of this section, "physician-assisted suicide" means any act by a physician or a  
15 person acting at the direction of a physician of purposely aiding or soliciting another person to end that person's  
16 life, including prescribing a drug, compound, or substance, providing a medical procedure, or directly or indirectly  
17 participating in an act with the purpose of aiding or soliciting that person's suicide.

18 (b) The term "physician-assisted suicide" does not include end-of-life palliative care in which a dying  
19 person receives medication to alleviate pain that may incidentally hasten the dying person's death or any act to  
20 withhold or withdraw life-sustaining treatment authorized pursuant to Title 50, chapters 9 and 10.  
21

22 Section 2. Section 45-5-105, MCA, is amended to read:

23 "45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit  
24 suicide, ~~but such suicide does not occur, including physician-assisted suicide as defined in [section 1],~~ commits  
25 the offense of aiding or soliciting suicide.

26 (2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state  
27 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."  
28

29 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
30 integral part of Title 45, chapter 5, part 1, and the provisions of Title 45, chapter 5, part 1, apply to [section 1].

1

2        NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
3 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
4 remains in effect in all valid applications that are severable from the invalid applications.

5

6        NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

7

8        NEW SECTION. **Section 6. Applicability.** [This act] applies to acts committed on or after [the effective  
9 date of this act].

10

- END -

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Alex Schadenberg  
Executive director  
Euthanasia Prevention Coalition  
P. O. Box 25033  
London, ON N6C 6A8

October 22, 2009

Dear Mr. Schadenberg:

We are a physician and an attorney in Washington State where assisted suicide is regrettably legal. We write to comment on the lawsuit in Connecticut which seeks to legalize "aid in dying" for "terminally ill patients."

The terms "aid in dying" and "terminally ill" imply that legalization would apply only to dying patients. Don't count on it. In Montana, where there is another lawsuit involving "aid in dying", assisted suicide advocates define the phrase "terminally ill patient" as follows:

[A] person 18 years of age or older who has an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of his or her attending physician, result in death within a relatively short time.  
(See, Enclosed Interrogatory Responses from Montana Plaintiffs)

Shockingly, this definition is broad enough to include an 18 year old who is insulin dependent or dependent on kidney dialysis, or a young adult with stable HIV/AIDS. Each of these patients could live for decades with appropriate medical treatment. Yet, they are "terminally ill" according to the definition promoted by advocates of assisted suicide.

Once someone is labeled "terminal," an easy justification can be made that their treatment or coverage should be denied in favor of someone more deserving. In Oregon, where assisted suicide has been legal for years, "terminal" patients have not only been denied coverage for treatment, they have been offered assisted suicide instead. The most well-known cases involve Barbara Wagner and Randy Stroup, reported at <http://www.abcnews.go.com/Health/comments?type=story&id=5517492>.

Those who believe that assisted suicide promotes free choice may discover that it does anything but.

Very truly yours,

Theresa Schrempp, Attorney at Law

Richard Wonderly M. D.

Enclosure

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*This letter  
discusses the  
definition of  
"terminal" proposed  
by Compassion  
in Bereavement*

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17 LOEHNEN, M.D., LAR AUTO, M.D.,  
18 GEORGE RISI, JR., M.D. and  
19 COMPASSION & CHOICES,

20 Plaintiffs,

21 v.

22 STATE OF MONTANA and MIKE  
23 MCGRATH, ATTORNEY GENERAL,

24 Defendants.

Judge: Dorothy McCarter  
Cause No. ADV 2007-787

PLAINTIFFS' RESPONSES TO  
STATE OF MONTANA'S FIRST  
DISCOVERY REQUESTS

25 Plaintiffs respond to Defendant State of Montana's First Discovery Requests as follows:

26 INTERROGATORY NO. 1: Define "aid in dying" as it is used in the Complaint,  
27 including the specific medication(s) and process(es) involved, any differences between the type,  
28 dose, and amount of medication prescribed for palliative care and "aid in dying," the resulting

PLAINTIFFS' RESPONSES TO STATE OF MONTANA'S FIRST DISCOVERY REQUESTS

Page 1

1 person understands what he or she is doing and the probable consequences of his or her acts.  
2 Mental competence will be determined by the person's attending physician based upon the  
3 physician's professional judgment and assessment of the relevant medical evidence.  
4

5 **INTERROGATORY NO. 4:** Define "terminally ill adult patient" as it is used in the  
6 Complaint, including the specific class that Plaintiff Patients' purport to represent, the diseases  
7 that may qualify for terminal illness, expected terminal prognosis, who will determine the  
8 diagnosis and prognosis, and any other objective standards that delimit the definition.

9 **ANSWER:** The term "terminally ill adult patient", as used in the complaint, means a  
10 person 18 years of age or older who has an incurable or irreversible condition that, without the  
11 administration of life-sustaining treatment, will, in the opinion of his or her attending physician,  
12 result in death within a relatively short time. This definition is not limited to any specific set of  
13 illnesses, conditions or diseases. The patient plaintiffs in this case represent the class of Montana  
14 citizens who are mentally competent, adult, terminally ill under this definition, and wish to avail  
15 themselves of the right to aid in dying. The patient's diagnosis and prognosis will be determined  
16 by his or her attending physician.  
17

18 **INTERROGATORY NO. 5:** Define "a dying process the patient finds intolerable" as it  
19 is used in the Complaint; including any objective standards that delimit the definition.

20 **ANSWER:** This is a subjective determination made by the individual patient based upon  
21 his or her medical condition and circumstances, symptoms, and personal values and beliefs.  
22

23 **INTERROGATORY NO. 6:** Define how a patient seeking "aid in dying" "requests such  
24 assistance" as it is described in the Complaint.  
25

File:  
Montana

MEMORANDUM

TO: Senate Judiciary Committee  
FROM: Margaret Dore, Esq.  
RE: Vote No on SB 202. (No Assisted Suicide/Euthanasia)  
HEARING: February 10, 2013 at 8 a.m.  
DATE: February 8, 2013

filed  
2/10/13

This memo discusses  
public policy reasons  
to prohibit assisted  
suicide in Montana

INDEX

I.	INTRODUCTION . . . . .	1
II.	FACTUAL AND LEGAL BACKGROUND . . . . .	2
	A. Compassion & Choices is a Successor Organization to the Hemlock Society . . . . .	2
	B. Physician-assisted Suicide . . . . .	2
	C. Withholding or Withdrawing Treatment . . . . .	3
	D. Most States Have Rejected Assisted Suicide and/or Euthanasia . . . . .	3
III.	THE BILL . . . . .	4
	A. <u>"Eligible" Patients May Have Years, Even Decades, to Live</u> . . . . .	4
	1. If Montana follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for persons with chronic conditions such as diabetes . . . . .	4
	2. Predictions of life expectancy can be wrong . . . . .	6

1

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B.	If SB 202 is Enacted, There will be Pressure to Expand "Eligibility" . . . . .	6
C.	How the Bill Works . . . . .	7
D.	Specific Problems . . . . .	7
1.	No witnesses at the death . . . . .	7
2.	Adding witnesses will not fix the problem . . . . .	8
3.	Witnesses can be coercive . . . . .	8
4.	Someone else is allowed to speak for the patient . . . . .	9
5.	Legal capacity for treatment decisions is not required when requesting the lethal dose . . . . .	10
6.	Consent is not required when the lethal dose is administered . . . . .	11
7.	Euthanasia is not prohibited . . . . .	11
8.	The term, "self-administer" allows someone else to administer the lethal dose to the patient . . . . .	12
9.	If Montana follows Washington State, all deaths under SB 202 will be treated as "Natural," i.e., no matter what the facts; There will be no recourse for patients or their families . . . . .	13
10.	Individual "opt outs" are not allowed . . . . .	14

IV. PUBLIC SAFETY AND WELFARE . . . . . 15

3

A.	<u>Legalization will Create New Paths of Elder Abuse</u> . . . . .	15
B.	Any Study Claiming that Oregon's Law is Safe, is Invalid . . . . .	15

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(4)	C.	<u>Legal Assisted Suicide Allows Health Care Providers and Insurers to Steer Patients to Suicide</u> . . . . .	16
	D.	Oregon's Annual Report for 2013 is Consistent with Financial Elder Abuse and the "Barbara Wagner" Scenario . . . . .	17
(5)	E.	<u>In Oregon, Other (Regular) Suicides Have Increased with Legalization of Physician-Assisted Suicide; the Financial Cost is "Enormous"</u> . . . . .	18
	F.	<u>Legal Assisted Suicide can be Traumatic for Family Members as well as Patients</u> . . . . .	20
(6)		1. The Swiss study . . . . .	20
		2. My cases involving the Oregon and Washington assisted suicide laws . . . . .	20
	G.	SB 202 lacks transparency and accountability . . . . .	21
		1. No annual reporting . . . . .	21
		2. Record keeping is private . . . . .	21
		3. The death certificate is required to be falsified . . . . .	21
	H.	Pain is not the Issue . . . . .	22
	V.	CONCLUSION . . . . .	22

# **APPENDIX**

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## I. INTRODUCTION

I am an attorney in Washington State where assisted suicide is legal.<sup>1</sup> Our law is modeled on Oregon's law. Both laws are similar to the proposed bill, SB 202.<sup>2</sup>

SB 202 eliminates safeguards such as waiting periods that supposedly render the Oregon and Washington laws safe.<sup>3</sup> Doctor reporting is also eliminated.<sup>4</sup> The former Hemlock Society, Compassion & Choices, claims that this is because Oregon's reporting system has "demonstrated the safety of the practice."<sup>5</sup> To the contrary, Oregon's reports support that the claimed safety is speculative. The reported statistics are also consistent with elder abuse. No wonder Compassion & Choices wants the reporting system gone.

---

<sup>1</sup> I have been licensed to practice law in Washington state since 1986. I am a former Law Clerk to the Washington State Supreme Court. I am a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I am also President of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide. For more information, please see [www.margaretdore.com](http://www.margaretdore.com), [www.choiceillusion.org](http://www.choiceillusion.org) and [www.margaretdore.org](http://www.margaretdore.org).

<sup>2</sup> A copy of SB 202 is attached hereto at A-1 through A-13.

<sup>3</sup> The Oregon and Washington laws have a 15 day waiting period and a 48 hour waiting period. See ORS 127.850 § 3.08 & RCW 70.245.110. SB 202 does not. Oregon's and Washington's laws require a second "consulting" doctor. See ORS 127.820 § 302 & RCW 70.245.050. SB 202 makes the second doctor "waivable," i.e., not required. See SB 202 § 7. Oregon and Washington require two oral requests. See ORS 127.840 § 306 & RCW 70.425.090. SB 202 requires one oral request and a written request. See SB 202, § 4.

<sup>4</sup> The Oregon and Washington laws require doctor reporting to a health department entity. See ORS 127.865 § 3.11 & RCW 70.245.150. SB 202 does not.

<sup>5</sup> Compassion & Choices' Handout, "Montana Physicians Can Now Respect Dying Patients' Decisions, [etc]," passed out as part of a media packet, January 27, 2011.

## II. FACTUAL AND LEGAL BACKGROUND

### A. Compassion & Choices is a Successor Organization to the Hemlock Society

Compassion & Choices ("C & C") was formed in 2004 as the result of a merger/takeover of two other organizations.<sup>6</sup> One of these organizations was the former Hemlock Society, originally formed by Derek Humphry.<sup>7</sup>

In 2011, Humphry was in the news as a promoter of mail-order suicide kits.<sup>8</sup> Later that year, he was the keynote speaker at C & C's annual meeting.<sup>9</sup>

### B. Physician-assisted Suicide, Assisted Suicide and Euthanasia.

The American Medical Association defines "physician-assisted suicide" as occurring when "a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending act."<sup>10</sup> "Assisted suicide" is a general term in which the aiding person is not necessarily a physician. "Euthanasia," by contrast, is the

---

<sup>6</sup> See Ian Dowbiggin, A Concise History of Euthanasia 146 (2007) ("In 2003, [the] Hemlock [Society] changed its name to End-of-Life Choices, which merged with Compassion in Dying in 2004, to form Compassion & Choices") and Compassion & Choices Newsletter excerpt attached hereto at A-14.

<sup>7</sup> Id.

<sup>8</sup> Randi Bjornstad, "Suicide Kits Sell Death by Mail," *The Register-Guard*, March 20, 2011, at A-17 ("All roads lead to Derek Humphry").

<sup>9</sup> See Compassion & Choices newsletter at A-14.

<sup>10</sup> The AMA Code of Medical Ethics, Opinion 2.211 - Physician-Assisted Suicide. (Attached at A-18).

direct administration of a lethal agent with the intent to cause another person's death.<sup>11</sup> "Euthanasia" is also known as "mercy killing."<sup>12</sup>

The American Medical Association rejects physician-assisted suicide and euthanasia, stating they are:

fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks.<sup>13</sup>

**C. Withholding or Withdrawing Treatment.**

Withholding or withdrawing treatment ("pulling the plug") is not assisted suicide or euthanasia. The purpose is to remove treatment as opposed to an intent to kill the patient. More importantly, the patient does not necessarily die. Consider this quote from an article in Washington state regarding a man removed from a ventilator:

[I]nstead of dying as expected, the man slowly began to get better.<sup>14</sup>

**D. Most States Have Rejected Assisted Suicide and/or Euthanasia**

The vast majority of states to consider legalizing assisted

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<sup>11</sup> Cf. AMA Code of Ethics, Opinion 2.21 - Euthanasia. (Attached at A-19).

<sup>12</sup> The American Heritage Dictionary of the English Language. Definition available at <http://www.thefreedictionary.com/p/mercy%20killing>

<sup>13</sup> AMA Code of Ethics, Opinions 2.211 and 2.21, *supra* at footnotes 10 & 11.

<sup>14</sup> Nina Shapiro, *Terminal Uncertainty - Washington's new 'Death with Dignity' law allows doctors to help people commit suicide - once they've determined that the patient has only six months to live. But what if they're wrong?*, Seattle Weekly, January 14, 2009. (Attached at A-20, quote at A-22).

suicide and/or euthanasia have rejected it.<sup>15</sup> Just last week, a bill similar to SB 202 was summarily defeated in Colorado, which is Compassion & Choices' home state.<sup>16</sup>

In the last four years, four states have strengthened their laws against assisted suicide. These states are: Arizona, Idaho, Georgia and Louisiana.<sup>17</sup>

### **III. THE BILL**

#### **A. "Eligible" Patients May Have Years, Even Decades, to Live.**

SB 202 applies to "terminal" patients, meaning those predicted to have six months or less to live.<sup>18</sup> Such persons may, however, actually have years, even decades, to live, *i.e.*, unless this bill passes and they commit suicide or are euthanized thereunder. This is true for at least two reasons:

- 1. If Montana follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for persons with chronic conditions such as diabetes.**

SB 202 states:

"Terminal illness" means an incurable and irreversible illness that has been medically

---

<sup>15</sup> See tabulation at [http://epcdocuments.files.wordpress.com/2011/10/attempts\\_to\\_legalize\\_001.pdf](http://epcdocuments.files.wordpress.com/2011/10/attempts_to_legalize_001.pdf)

<sup>16</sup> See AP article at A-26.

<sup>17</sup> See articles at A-27 to A-30.

<sup>18</sup> SB 202, § 2(15). (Attached at A-2).

confirmed and will, within reasonable medical judgment, produce death within 6 months.<sup>19</sup>

Oregon's law has a similar definition, as follows:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.<sup>20</sup>

In Oregon, this similar definition is interpreted to include chronic conditions such as insulin dependent diabetes.<sup>21</sup> Oregon doctor, William Toffler, explains:

Our law applies to "terminal" patients who are predicted to have less than six months to live. In practice, this idea of terminal has recently become stretched to include people with chronic conditions . . . . Persons with these conditions are considered terminal if they are dependent on their medications, such as insulin, to live.<sup>22</sup>

If Montana enacts SB 202 and follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for people with chronic conditions such as diabetes. Dr. Toffler states:

Such persons, with treatment, could otherwise have years or even decades to live.<sup>23</sup>

---

<sup>19</sup> SB 202, §2(15).

<sup>20</sup> Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-31.

<sup>21</sup> See Oregon's annual assisted suicide report for 2013, attached hereto at A-32 to A-38. "Chronic lower respiratory disease" and "diabetes" are listed at A-37 & A-38, respectively.

<sup>22</sup> Letter to the Editor, William Toffler MD, New Haven Register, February 24, 2014, ¶2. (Attached at A-39). (I verified the content with him).

<sup>23</sup> Id.

**2. Predictions of life expectancy can be wrong.**

Patients may also have years to live because predicting life expectancy is not an exact science.<sup>24</sup> Consider John Norton who was diagnosed with ALS. He was told that he would get progressively worse (be paralyzed) and die in three to five years. Instead, the disease progression stopped on its own. In a 2012 affidavit, at age 74, he states:

If assisted suicide or euthanasia had been available to me in the 1950's, I would have missed the bulk of my life and my life yet to come.

Affidavit of John Norton, attached at A-41, ¶ 5.

**B. If SB 202 Is Enacted, There Will be Pressure to Expand "Eligibility."**

In Washington State, our law went into effect in 2009. Since then, we have had informal proposals to expand our law to non-terminal people. For example, there was a column in the *Seattle Times*, which is our largest paper, with a suggestion of euthanasia for people who didn't have enough money for their old age.<sup>25</sup> So, if you worked hard all your life, paid taxes and then

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<sup>24</sup> Shapiro, Nina, *Terminal Uncertainty - Washington's new 'Death with Dignity' law allows doctors to help people commit suicide - once they've determined that the patient has only six months to live. But what if they're wrong?*, *Seattle Weekly*, January 14, 2009. (Attached hereto at A-20).

<sup>25</sup> See Jerry Large, "Planning for old age at a premium," *The Seattle Times*, March 8, 2012 ("After Monday's column, . . . a few [readers] suggested that if you couldn't save enough money to see you through your old age, you shouldn't expect society to bail you out. At least a couple mentioned euthanasia as a solution.") (Emphasis added). (Attached at A-43).

your pension plan went broke, this is how society would pay you back, with non-voluntary or involuntary euthanasia?

Prior to passing our law, I never heard anyone talk like this.

**C. How the Bill Works.**

SB 202 has an application process to obtain the lethal dose, which includes a written lethal dose request form.<sup>26</sup>

Once the lethal dose is issued by the pharmacy, there is no oversight.<sup>27</sup> No doctor is required to be present.<sup>28</sup> The death is not required to be witnessed.<sup>29</sup>

**D. Specific Problems.**

Proponents claim that SB 202 will assure patient choice and control. This is untrue.

**1. No witnesses at the death**

As noted above, SB 202 does not require witnesses at the death. Without disinterested witnesses, the opportunity is created for a person to administer the lethal dose to the patient without his consent.<sup>30</sup> Even if he struggled, who would know?

---

<sup>26</sup> The request form can be viewed at SB 202, § 11. (Attached at A-6 & A-8)

<sup>27</sup> See SB 202 in its entirety. (Attached at A-1 through A-13).

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> The drugs used, Secobarbital and Pentobarbital (Nembutal), are water soluble, such that they can be injected without consent, for example, to a sleeping person. See "Secobarbital Sodium Capsules, Drugs.Com, at <http://www.drugs.com/pro/seconal-sodium.html> and <http://www.drugs.com/pro/nembutal.html> See also Oregon's report, attached at

Without witnesses, the patient's control over the time, place and manner of his death is not guaranteed.

**2. Adding witnesses will not fix the problem.**

Requiring disinterested witnesses at the death would protect against overt murder. Generally, however, witnesses are not much of a safeguard. Many wills are properly witnessed and nonetheless set aside for undue influence, fraud, etc.

**3. Witnesses can be coercive.**

Witnesses can also be coercive. Consider Oregon resident Lovelle Svart, who threw herself an "exit party," during which she danced the polka with George Eighmey of Compassion & Choices. The party was reported in the *Seattle Times*, which wrote an article implying that she was in control.<sup>31</sup> At the end of the party, however, when it was time for her to die, the paper also reported this exchange between her and Eighmey, which took place in front of ten people:

"Is this what you want?"

"Actually, I'd like to go on partying," Lovelle replied, laughing before turning serious. "But, yes."

"If you do take it, you will die."

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A-40 (listing these drugs).

<sup>31</sup> See Don Colburn, "Last day of life all planned out, down to the polka," October 26, 2007, available at [http://seattletimes.com/html/localnews/2003918100\\_suicide02.html](http://seattletimes.com/html/localnews/2003918100_suicide02.html)

"Yes."<sup>32</sup>

The situation is similar to a wedding when it's time to take your vows. Everyone's watching and it's the thing to do. So even if you are having second thoughts or would rather "go on partying," you go forward to take the lethal dose. If Eighmey had wanted to give her an out, he could have said:

"You are having so much fun, you don't have to do this today or even next week."

Instead, he proceeded according to the script that she would die at the end of the party. His role was to preside over her death. Her role was to comply. Once she was in this role, she no longer had control. The situation was inherently coercive.

**4. Someone else is allowed to speak for the patient.**

Under SB 202, patients signing the lethal dose request form are required to be "competent."<sup>33</sup> This is, however, a relaxed standard in which someone else is allowed to speak for the patient. SB 202 states:

"Competent" means that . . . the patient has the ability to make and communicate an informed decision . . ., including communication through persons familiar with the patient's manner of communicating . . ."

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<sup>32</sup> Id.

<sup>33</sup> SB 202 § 2(12). (Attached at A-2).

(Emphasis added).<sup>34</sup>

There is no requirement that the person speaking for the patient be a designated agent such as an attorney in fact. The person could also be an heir or a new "best friend" who will benefit financially from the patient's death. The patient would not necessarily be in control of his fate.

**5. Legal capacity for treatment decisions is not required when requesting the lethal dose.**

Under SB 202's definition of "competent," there is no requirement that a patient signing the lethal dose request form have the ability to make "responsible" or "rational" decisions, which is the definition of legal capacity for treatment decisions in Montana.<sup>35</sup> Yet again, the patient would not necessarily be in

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<sup>34</sup> SB 202 § 2(3) states:

"Competent" means that, in the opinion of a court or in the opinion of a patient's attending physician, consulting physician, psychiatrist, or psychologist, the patient has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the patient's manner of communicating if that person is available.

Attached at A-1.

<sup>35</sup> Compare SB 202's definition of "competent" in § 2(3) and 72-5-101(1), MCA, which states:

"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impaired the person's judgment that the person is incapable of realizing and